

TO: Cynthia “Cindy” Tom, Assistant City Attorney,
Ethics & Compliance Team, Law Department, City of Austin

FROM: Stefan Wray

DATE: September 5, 2014

RE: Statement for ERC Preliminary Hearing

The following is a prepared statement from complainant Stefan Wray appearing on September 5, 2014 at a preliminary hearing held by the City of Austin Ethics Review Commission concerning a complaint filed against District 3 City Council candidate Susana Almanza, hereafter referred to as the respondent.

INTRODUCTION

My name is Stefan Wray and I am the complainant in this preliminary hearing.

I have lived in Austin since 1995 and have been a voter in many local, state, and national elections. In 2012 I supported and voted for the new 10-1 City Council system. I’ve lived in what is now the new District 3 for the past 5 years.

Since early 2014 I began to follow the candidates in my district. I read news reports and District 3 candidate web sites and Facebook pages. I also scanned through much of the election information found on the City’s web site. At some point after the July 15 campaign finance reports were filed, I examined those for District 3 candidates.

ALLEGED VIOLATION

From reviewing July 15 campaign finance reports for District 3 candidates, I found that the respondent in this Ethics Review Commission complaint failed to complete information for employer and occupation for contributions of \$200 or greater.

During Citizen’s Communication at the August 12, 2014 Ethics Review Commission meeting, I presented the respondent’s July 15 report and referenced the alleged violation of Section § 2-2-21 of the Austin Fair Campaign Ordinance. At that meeting I was advised that the correct procedure was to file a formal complaint, which I did on August 13, 2014.

In my filed and notarized complaint I allege that Section § 2-2-21 had been violated because information for employer and occupation for contributions of \$200 or greater was absent on the respondent’s July 15 campaign finance report for 23 contributions. I included a copy of the respondent’s report with the complaint.

Section § 2-2-21 is actually the very first section of Article 3 of the Austin Fair Campaign Ordinance, which covers “DISCLOSURES AND FILING PROCEDURES FOR CONTRIBUTION AND EXPENDITURE REPORTS.”

Section § 2-2-21, titled “ADDITIONAL INFORMATION REQUIRED ON ALL CONTRIBUTION AND EXPENDITURE REPORTS FILED WITH THE CITY,” states:

In addition to the information required under the Texas Election Code, contribution and expenditure reports filed with the City by a candidate, office holder, and political committee involved in a City election shall include the following information: (A) for all individual contributions of \$200 or more in a reporting period, disclosure of the occupation of the contributor and the name of the contributor’s employer;

As noted, there are 23 instances in the respondent’s July 15 campaign finance report for which Section § 2-2-21 is alleged to be violated.

RESPONDENT’S ADMISSION AND CLAIMS

In an affidavit signed on August 18, 2014, and submitted to Assistant City Attorney Cynthia Tom, the respondent admits to omitting the required information for employer and occupation for contributions \$200 or greater on the respondent’s July 15 campaign finance report.

The respondent claims that the omission was unintentional.

The respondent further seems to claim that in large part the omission was due to poor or incomplete instructions from the City stating that “The City’s instructions to the candidates implied that the candidates should review the Texas Election Code provision regarding such reports for occupation and employer, but that statute does not apply to these candidates for Austin City Council. My campaign manager and I were left with the impression that the occupation/employer reporting was not required.”

The respondent admits to not seeking legal counsel.

Instead, on the matter of reporting occupation and employer information the respondent claims to have sought advice from a former local elected official, former Mayor Gus Garcia, who was last in an election race in 2001 – 7 years before the passage of the current Campaign Finance ordinance that is in force.

Finally, the respondent claims to have found six July 15 campaign finance reports with the “same mistake” – presumably with no employer and occupation information for contributions of \$200 or greater.

REACTION TO RESPONDENT'S ADMISSION AND CLAIMS

The claim that the City's instructions imply that candidates should only review the Texas Election Code as a guide for campaign finance reporting can be shown to be not true. Moreover, it can be shown that the respondent received the appropriate City instructions found within the Candidate Packet.

Therefore, it can be shown that the unintentionality of the omission is based on a lack of attention to information provided to and received by the respondent and a failure to follow clearly delineated instructions. The omission does not appear to be a simple mistake but the result of a lack of due diligence.

The Candidate Packet made available to all candidates, both online and as a hard copy, clearly references what is required on campaign finance reports beyond what is required by the Texas Election Code.

At the very beginning of the Candidate Packet is the Table of Contents that is a clear overview of all the material within the packet. On the second page of the Table of Contents, it clearly indicates that "Austin City Code, Chapter 2-2, Campaign Finance" is within the packet, which in fact it is.

Two relevant sections of Chapter 2-2 are Section § 2-2-3 and the aforementioned Section § 2-2-21.

Section § 2-2-3, titled "CONFORMITY WITH TEXAS ELECTION CODE" is of particular relevance in part (B) because it clearly states:

Under this chapter, candidates, officeholders, and political committees participating in City elections may be required to make additional disclosures, to file additional notices, and to comply with certain restrictions not set out in the Texas Election Code.

It can be shown that the candidate received a hard copy of the Candidate Packet and therefore seemingly should have possessed all the information required to correctly complete the July 15 campaign finance report according to Chapter 2-2, the Austin Fair Campaign Ordinance.

When the respondent received a hard copy of the Candidate Packet from the City Clerk's Office, the respondent signed a Candidate Packet sheet indicating receipt. This sheet would be evidence presented in a Final Hearing.

The respondent also signed, on May 29, 2014, a Candidate Contract, which in Section V states the candidate is "obligated to act in accordance with all substantive and procedural requirements of the Charter and the Austin Fair Campaign Ordinance." This document would be presented as evidence.

It is presumed that the respondent's agreement to be obligated to act in accordance with all substantive and procedural requirements of the Austin Fair Campaign Ordinance, generally, is also an agreement to act in accordance with Section § 2-2-21, specifically. Arguably, the respondent, in addition to violating Section § 2-2-21 in 23 instances, also failed to uphold the Candidate Agreement in this case.

It can be demonstrated with evidence that the respondent possessed the necessary information to complete the July 15 campaign finance report properly and moreover was bound to do so as per the signed Candidate Contract.

Concerning the respondent's admission of not seeking legal counsel on the matter yet instead seeking advice from a former city official whose campaign pre-dated the current law by 7 years, the Clerk's Memo in the Candidate Packet explicitly warns candidates to consult legal counsel due to the complexity of campaign finance law.

Finally, regarding the respondent's claim that there were 6 other candidates who made the "same mistake" in their July 15 report, it is not clear that this is relevant or what it demonstrates for purposes of this complaint. Perhaps it shows that there are other candidates similar to the respondent who apparently did not fully read the documents in the Candidate Packet or secure qualified assistance.

If in fact there were six who made the "same mistake" out of the field of 69 reports filed, that means that 63 did it correctly, which would be a 91% success rate.

My inquiry, however, was with District 3 candidate filings.

REQUESTED ACTION OF THE ETHICS REVIEW COMMISSION

According to the Rules and Procedures for Complaints and Hearings, at the conclusion of this hearing the Commission can choose one of 4 courses of action and can determine that: 1) there exists reasonable grounds to schedule a Final Hearing; 2) there is a failure to allege a violation; 3) the violation is uncontested by the respondent; or 4) the complaint should be dismissed.

It is true that in the submitted affidavit the respondent does not contest the violation but rather admits to it. Therefore one outcome is that you may decide to rule that this is an Uncontested Violation and proceed directly to consider appropriate sanction or prosecution as the Rules and Procedures provide.

However, if that becomes your decision, then it would prevent the submission of further evidence in a Final Hearing that may have bearing on how you choose to act.

I would like the commission to consider evidence, referenced above and listed at the conclusion of this statement, that demonstrates that the respondent possessed the information and instructions needed to correctly complete the campaign finance reports.

Again, I'm speaking of the document showing receipt of the Candidate Packet and the signed Candidate Contract.

This evidence helps to shape a story that the omission of the required employer and occupation information on the July 15 campaign finance report is not simply an unintentional mistake as the respondent would have you believe. Rather, it shows that the respondent failed to understand important information and follow detailed instructions provided in documents to all candidates by the City Clerk's office.

The evidence helps to shape a story that the City is not to blame, and that there can be no truth to the claim that the City's instructions imply that solely the Texas Election Code should have been followed in completing the reports.

This evidence helps to shape a story that it seems to be the respondent's lack of due diligence and negligence in attention to detail that resulted in the omissions.

CONCLUSION

Some have sought to trivialize this complaint. But the fact is that the Austin Fair Campaign Ordinance is the playbook that candidates need to follow. Any violation of Chapter 2-2, no matter how big or small, should be considered with all seriousness.

If a candidate lacks the needed attention to follow this playbook on the campaign trail, how can we expect the candidate to suddenly possess a high level of due diligence once elected to Council?

I believe this is the first ethics complaint regarding a candidate running for City Council under the new 10-1 system. We know there will be more. How you approach this and what you decide will set the tone and be a precedent. You have the opportunity to set a low bar or a high bar.

Some of today's City Council members were on the dais in 2008 when the current Austin Campaign Finance Ordinance was approved. Council Member Martinez was one of the lead sponsors. Mayor Lee Leffingwell voted for it.

As you proceed, consider their intent.

I think Austin voters would want you to be fair, yet tough in your decision and to set a high bar and a good example for future candidates.

Your decision is as much about this institution and the efficacy of the Ethics Review Commission as it is about the individual respondent.

With that, I conclude my remarks.

TESTIMONY AND EVIDENCE PROPOSED TO BE OFFERED AT A FINAL HEARING

The following is testimony and evidence that I would present at a Final Hearing:

- Candidate Packet sign-in sheet provided by City Clerk on August 22 that demonstrates that the respondent received and signed for a Candidate Packet
- City Council Candidate Packet, specifically
 - Page 2 of Table of Contents which references Austin City Code, Chapter 2-2, Campaign Finance
 - Page 1 of Memorandum from the City Clerk's office that warns candidates of the complexity of campaign finance law and that recommends retaining legal counsel
 - Chapter 2-2. Campaign Finance, specifically
 - 2-2-3 Conformity With Texas Election Code which in (C) states that candidates may be required to comply with restrictions not set out in the Texas Election Code
 - 2-2-6 Candidate Guide
 - 2-2-21 Additional Information Required on All Contribution and Expenditure Reports Filed by the City
- Respondent's Candidate Contract signed on May 29, 2014, specifically
 - Section V which states the candidate must act in accordance with all substantive and procedural requirements of the Austin Fair Campaign Ordinance
- Respondent's July 15 Campaign Finance filing which shows 23 records that do comply with 2-2-21
- Samples of candidate campaign filings in which the candidates were able to comply with 2-2-21
- List from showing 69 reports on July 15 filed from austintexas.gov/cityclerk/elections/2014_campaign_finance_reporting.htm
- Possible testimony from the respondent & campaign manager
- Possible testimony from appropriate Assistant City Attorney